

**REPORT BY THE
AUDITOR GENERAL
OF CALIFORNIA**

**SOME COUNTIES ARE NOT PROMPTLY REMITTING FEES
COLLECTED FOR THE JUDGES' RETIREMENT SYSTEM**

**Some Counties Are Not Promptly Remitting Fees
Collected for the Judges' Retirement System**

P-141, September 1992

**Office of the Auditor General
California**



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September 2, 1992

P-141

Honorable Robert J. Campbell, Chairman
Members, Joint Legislative Audit Committee
State Capitol, Room 2163
Sacramento, California 95814

Dear Mr. Chairman and Members:

The Office of the Auditor General presents its report concerning the Judges' Retirement System. The report indicates that counties need to ensure that they promptly remit their monthly filing fee collections to the State. In addition, the report indicates that counties must ensure that the courts promptly report their filing fee collections to the county auditor-controller's office for transmittal to the State. Finally, the report states that the courts should review a sample of fee waiver applications to determine whether it would be cost-effective to pursue recovery of waived fees.

We conducted this audit to comply with Item 0390-001-001 of the Supplemental Report of the 1991 Budget Act.

Respectfully submitted,

A handwritten signature in cursive script that reads "Kurt R. Sjoberg".

KURT R. SJOBERG
Auditor General (acting)

Table of Contents

Summary	S-1
Introduction	1
Chapters	
1 Some Counties Are Not Promptly Remitting Filing Fees to the State	11
Recommendations	16
2 Courts Are Complying With Most Laws and Rules When Processing Applications for Fee Waivers	17
Recommendation	22
Responses to the Audit	
Los Angeles County	
Auditor-Controller	23
Municipal Court	25
Orange County	
Auditor-Controller	27
Municipal Court	29
San Francisco City and County	
Superior Court	31

Summary

Results in Brief

State laws require courts and counties to collect and remit to the State filing fees collected in superior, municipal, and justice courts on behalf of the Judges' Retirement System. In addition, state laws and rules of the court outline procedures the courts must follow when granting or denying an application to have court fees and costs waived. During our review of the procedures courts and counties use to collect and remit filing fees and to process applications for waivers of court fees and costs, we noted the following conditions:

- Although the courts correctly reported their filing fee collections to their respective county auditor-controller's offices, the counties did not promptly remit these collections to the State;
- Courts are complying with most state laws and rules of the court when granting or denying applications for waivers of court fees and costs; and
- Courts have not established procedures to pursue recovery of court fees and costs when the litigant who is granted a fee waiver subsequently receives a monetary settlement.

Background

Section 75000 et seq. of the Government Code, commonly referred to as the Judges' Retirement Law, established the Judges' Retirement System (system). This system provides a retirement program for justices of the Supreme Court and courts of appeal and for judges in superior, municipal, and justice courts. The system is administered by the Public Employees' Retirement System, and all retirement benefits are paid out of the Judges' Retirement Fund. The primary revenue sources for this fund are contributions from active members; filing fees collected on civil suits filed in superior, municipal, and justice courts; and appropriations from the State's General Fund.

In recent years, contributions to the system have not been sufficient to support the costs of the system. Although the revenue collected from each of the funding sources increased from fiscal year 1981-82 to fiscal year 1990-91, the proportion of total revenue represented by judges' contributions and filing fees decreased during the same period. Furthermore, the amount of the appropriation increases each year because the system does not accumulate funds to pay benefits to members as they retire and because state law requires the Legislature to appropriate in the annual Budget Act the amount necessary to pay all the obligations of the Judges' Retirement Fund that become due in the ensuing fiscal year. As a result, the financial burden on the State's General Fund has continually increased.

**Some Filing
Fees Not
Promptly
Remitted
to State**

State laws require courts and counties to collect and remit to the State filing fees collected in superior, municipal, and justice courts on behalf of the system. During our review of the procedures used by six courts in three counties—Los Angeles, Orange, and San Francisco—we determined that the courts correctly reported the filing fee collections to the auditor-controller's offices in their respective counties. However, the county auditor-controllers did not promptly remit these collections to the State, so these funds were not immediately available to pay benefits to retirees of the system. In addition, the State lost the opportunity to earn interest on these funds. Moreover, since the monthly remittance advices

that counties submit to the State include collections for other state funds as well as for the Judges' Retirement Fund, the State lost interest earnings of nearly \$3.4 million on the collections reported by the counties in our sample.

Most Laws and Rules Followed for Granting or Denying Fee Waiver Applications

Section 68511.3 of the Government Code requires the Judicial Council to develop and adopt forms and rules for courts to allow litigants to proceed with a case without paying the required court fees and costs. The code outlines the criteria the courts must follow when granting or denying an application to have court fees and costs waived. When the litigant meets certain eligibility requirements, the law requires the court to grant the waiver; however, in some instances, the court has the discretion to determine whether or not to grant the litigant a waiver of all or part of the court fees and costs. During our review of 90 fee waiver applications, we noted that the courts complied with most of the applicable state laws and rules when processing such applications.

Recovery of Fees and Costs Not Always Pursued

Section 68511.3 of the Government Code states that, when the litigant whose fees have been waived is entitled to recover those fees and costs from another party, the court may assess the amount of the waived fees and costs against the other party and order the party to pay the sum to the county. In addition, this code section allows the court, at any time within three years after granting the waiver, to order the litigant to pay the court any waived fees and costs if it finds that the litigant's financial condition has changed and the litigant is now able to pay the waived fees and costs.

Section 6103 of the Government Code states that public agencies are not required to pay any fees to file papers in any court. However, Section 6103.5 states that, whenever a judgement is recovered by a public agency, the clerk of the court shall include as part of the judgement the amount of the filing fee that would have been paid. Court administrators stated that, although state law requires public agencies to pay to the court an amount equal to the

filing fees when they recover a judgement, the courts do not have procedures to ensure that public agencies comply with this requirement. In addition, administrators in five of the six courts stated that the courts do not have procedures to ensure that they recover waived fees and costs in cases wherein a litigant has been granted a fee waiver and is later entitled to recover those fees from another party.

The court administrators stated that the courts do not have procedures to ensure recovery of filing fees for several reasons: most cases do not result in a monetary settlement; in many cases, the litigant who received the waiver is the defendant who would not receive a monetary settlement; and most of the courts do not have an automated system to track the cases, nor would it be cost-effective to establish such a system.

Recommendations

To ensure that funds the courts collect on behalf of various state programs are promptly remitted to the State, county auditor-controllers should take the following actions:

- Ensure that the courts promptly remit their monthly filing fee collections to the county auditor-controller's offices;
- Promptly remit these collections to the State in accordance with state law and with the accounting guidelines established by the State Controller's Office;
- Develop a written policy that sets forth a specific limit on the number of days the courts have to report their collections to the county auditor-controller's offices; and
- Develop a system to track the preparation of the monthly remittances to ensure that they are submitted promptly and to ensure that they are received by the State.

To determine whether it would be cost-effective to pursue recovery of fees when the litigant who is granted a fee waiver or is exempt from paying the fees subsequently receives a settlement, the courts should review a sample of fee waiver applications and conduct a feasibility study similar to the study conducted by the Los Angeles Superior Court.

**Agency
Comments**

The Los Angeles County Auditor-Controller's Office stated that a written policy that sets a specific number of days for the courts to report their collections is not necessary because a requirement is already set forth in the *Manual of Accounting and Audit Guidelines for Municipal and Justice Courts*. However, the auditor-controller's office did state that it would remind courts of this requirement.

The Los Angeles County Municipal Court stated it will be conducting a feasibility study to determine whether it would be cost-effective to pursue recovery of waived filing fees from litigants.

The Orange County Auditor-Controller stated that it has no specific comments to the findings presented in the report; however, the auditor-controller states that it remits collections as quickly as possible given budgetary and staff constraints, and the enormous complexity of the court fees and fines allocation process.

The Central Orange County Municipal Court stated that at this time the court does not have a procedure to recover filing fees when the fees have been waived because it would not be cost-effective to establish a manual system. However, the court does state that the Civil Division will be automated in the future and tracking of cases with fee waivers could be included.

The Superior Court of the City and County of San Francisco does not support the recommendation that the court conduct a study to determine whether it would be cost-effective to pursue recovery of filing fees because there would be little benefit from such an attempt.

Introduction

Section 75000 et seq. of the Government Code, commonly referred to as the Judges' Retirement Law, established the Judges' Retirement System (system). This system provides a retirement program for justices of the Supreme Court and courts of appeal and for judges in superior, municipal, and justice courts. The system is administered by the Public Employees' Retirement System (PERS), and all retirement benefits are paid out of the Judges' Retirement Fund (fund). The primary revenue sources for this fund are contributions from active members; filing fees collected on civil suits filed in superior, municipal and justice courts; and appropriations from the State's General Fund.

Active members of the system contribute eight percent of their salaries to the fund. Similarly, from the General Fund, the State contributes an additional eight percent for the established judgeships of the Supreme Court and courts of appeal and for the judges of superior, municipal, and justice courts. In addition, filing fees of \$2 and \$3 from civil cases filed in superior, municipal, and justice courts are collected and deposited into the fund each month. Finally, in any year that the revenue collected is not sufficient to pay retirement benefits, state law requires the Legislature to appropriate from the General Fund the amount necessary to pay the retirement benefits during the ensuing fiscal year.

The Judges' Retirement System is the only statewide public retirement system that is funded on a "pay as you go" basis. Using this basis, all revenues collected by the system are used each year to pay benefits to those members who are already retired; therefore, none of the contributions made by active members go towards their

own retirement. In contrast, all other state-administered retirement systems provide that annual revenues be invested in a trust fund to ensure sufficient resources for paying future benefits to currently active members.

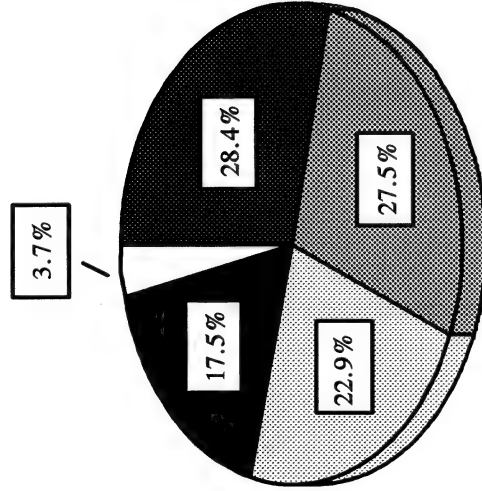
The financial structure of the system is composed of two types of costs. The current or ongoing cost of benefits earned by active members is called the “normal cost.” The other cost, commonly referred to as the “unfunded liability,” is the accumulated cost of benefits previously earned by active and retired members but not yet paid.

**Funding
Trends**

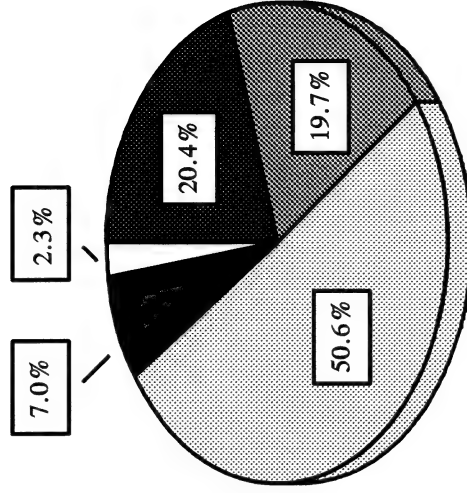
In recent years, contributions to the system have not been sufficient to support the system’s costs. As a result, the financial burden on the State’s General Fund has continually increased. Figure 1 shows the revenues collected for the system and the proportion of the total revenue that each of the funding sources represented for fiscal years 1981-82 and 1990-91.

Operating Revenues Judges' Retirement System

Fiscal Year 1981-82



Fiscal Year 1990-91



Operating Revenues (Dollars in thousands)	
State	\$ 5,932
Judges	5,740
Budget Act appropriation	4,775
Filing fees	3,665
Other	778
Total	<u>\$ 20,890</u>

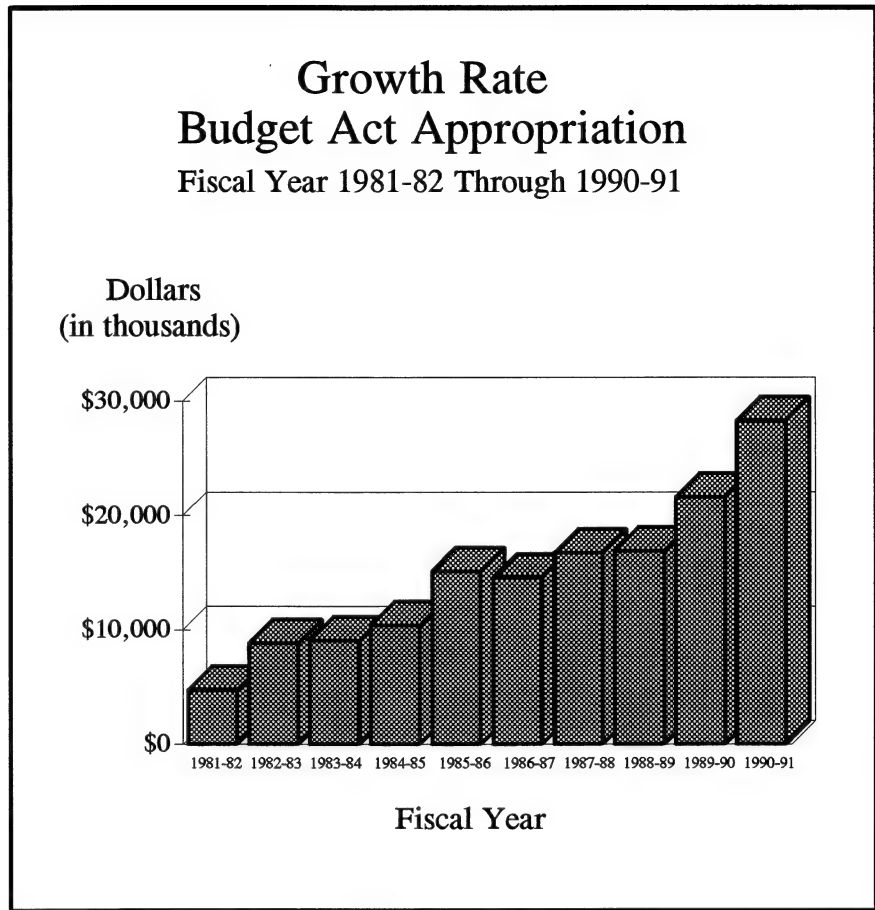
Operating Revenues (Dollars in thousands)	
State	\$ 11,397
Judges	10,994
Budget Act appropriation	28,235
Filing fees	3,901
Other	1,295
Total	<u>\$ 55,822</u>

Source: Governor's Budget, fiscal year 1983-84 through 1992-93.

As the figure indicates, although the revenue collected from each funding source increased during the ten-year period, the proportion of total revenue represented by four of the five funding sources decreased. For example, the amount of revenue collected from active judges nearly doubled from \$5.7 million to nearly \$11 million; however, the proportion of total revenue these contributions represented decreased from 27.5 percent in fiscal year 1981-82 to 19.7 percent in fiscal year 1990-91. Similarly, the amount collected from filing fees increased slightly from \$3.7 million in fiscal year 1981-82 to \$3.9 million in fiscal year 1990-91, whereas the proportion of total revenue represented by these filing fees dropped from 17.5 percent to 7.0 percent. In contrast, the Budget Act appropriation increased from \$4.8 million for fiscal year 1981-82 to \$28.2 million for fiscal year 1990-91. Furthermore, whereas the Budget Act appropriation represented 22.9 percent of total revenue in fiscal year 1981-82, it represented 50.6 percent of total revenue in fiscal year 1990-91.

Because the system does not accumulate funds to pay benefits to members as they retire, and because state law requires the Legislature to appropriate in the annual Budget Act the amount necessary to pay all the fund's obligations that become due in the ensuing fiscal year, the amount of the appropriation increases every year as more members retire. Figure 2 shows the growth rate of the Budget Act appropriation from fiscal year 1981-82 through fiscal year 1990-91.

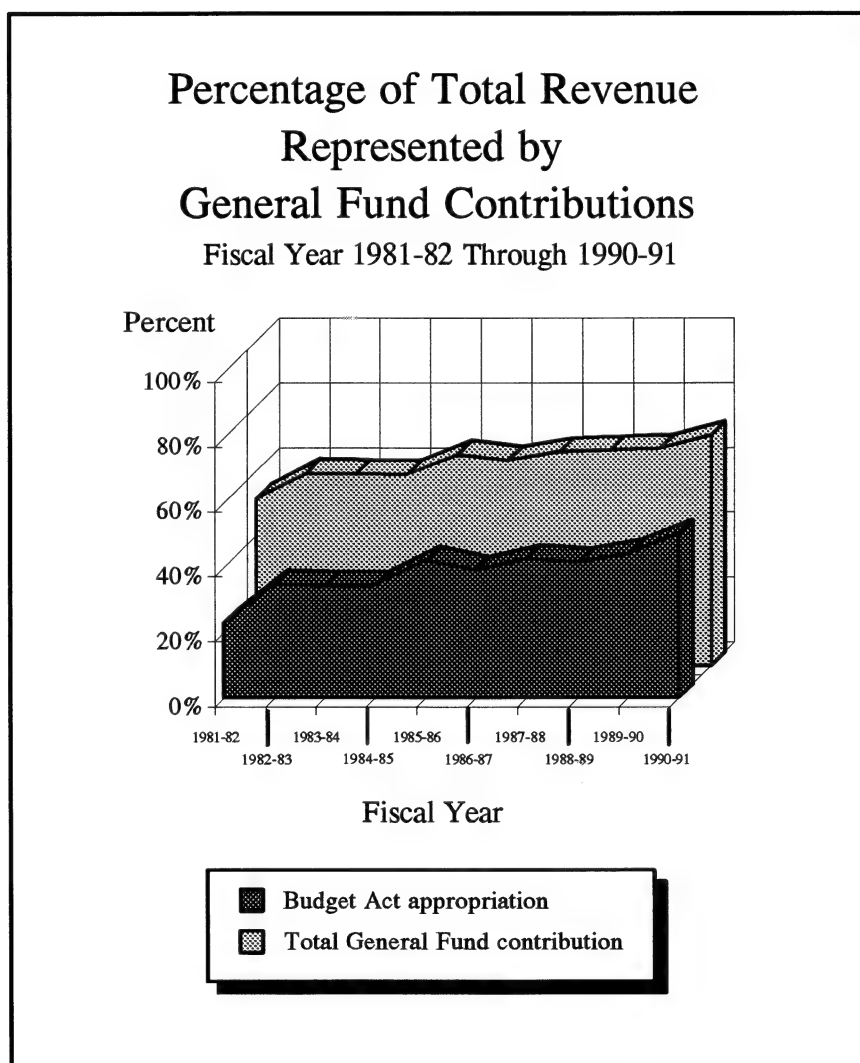
Figure 2



As the figure demonstrates, during this ten-year period, the amount of the appropriation has grown nearly 500 percent—from \$4.8 million to \$28.2 million. Furthermore, in its analysis of the 1992-93 Budget Bill, the Legislative Analyst's Office estimated that the appropriation for fiscal year 1991-92 will be \$35.8 million, and the proposed amount for fiscal year 1992-93 is more than \$45.7 million. Finally, the Legislative Analyst's Office estimates that, if the appropriation continues to grow at its current rate, between 20 and 30 percent per year, it will reach \$300 million by fiscal year 2001-2002.

As the system continues to experience funding problems, the financial burden on the State's General Fund continues to increase. As Figure 3 demonstrates, the proportion of total revenue represented by the Budget Act appropriation increased from 22.9 percent in fiscal year 1981-82 to 50.6 percent in fiscal year 1990-91. Moreover, the proportion of total revenue the General Fund represents, including both the Budget Act appropriation and the State's contribution equivalent to eight percent of judicial salaries, increased from 51.3 percent of total revenue collected for fiscal year 1981-82 to 71 percent of total revenue for fiscal year 1990-91.

Figure 3



Section 75110 of the Government Code states that the system must be fully funded and actuarially sound by January 1, 2002. This would require the unfunded liability to be paid within the next ten years. Historically, the contributions made to the system have been insufficient to pay for the cost of benefits earned by active members. Moreover, since these contributions are used to pay benefits to current retirees, the amount of the unfunded liability, that is, the accumulated cost of benefits previously earned by active and retired members but not yet paid, increases every year. In its report on the status of the liabilities and normal costs for the system, the PERS actuary states that the unfunded liability increased from \$895,522,000 as of June 30, 1989, to \$1,128,766,000 as of June 30, 1990. This growth of more than \$233 million represents a 26 percent increase from one year to the next.

According to the Legislative Analyst's Office, to reach full funding by the year 2002, contributions to the system would have to total \$196 million for each of the next ten years. If the current funding structure is used, wherein contribution rates and filing fees are fixed by statute, the contributions to the system would fall far short of this goal. For example, the total revenues for fiscal year 1992-93, including the proposed Budget Act appropriation of \$46 million, are projected to reach approximately \$75 million, which is \$121 million short of the \$196 million needed each year.

In an effort to address the system's continuing funding problems, the Legislature, in the Supplemental Report of the 1991 Budget Act, requested that the PERS convene a working group to develop options to fund the system fully. In its interim report issued on March 25, 1992, the working group stated that it had developed several proposals; however, it still needed to review the cost analyses for each of the proposals before issuing a final report. The proposals address the primary funding sources, including members' contributions, filing fee revenue, and the State's contributions. The working group plans to issue its final report in November 1992.

In addition to requesting that the PERS convene a working group to address the funding problems, the Legislature requested that the Office of the Auditor General review the administration of the filing fees for civil cases payable to the system. As part of this review, we noted that, although the total fee to file a civil case in either superior or municipal court has increased in recent years, the portion that is collected for the system, that is \$3 and \$2 in the respective courts, has remained unchanged since 1971. Moreover, our review disclosed that, although Chapter 1372, Statutes of 1980, authorized counties to adjust the amounts they collect for various civil case filings every two years to reflect current inflation rates, the law did not include the fee courts collect for the system. As a result, while the fees to file a civil case increased with inflation, the fees collected for the system remained the same.

Using the California Consumer Price Index, we determined that, if the fees collected for the system had been included in the law that allows counties to adjust the filing fees every two years, the fees collected for the system would be only \$4 in superior courts and \$3 in both municipal and justice courts. However, we also determined that, if the fees collected for the system had been adjusted for inflation each year since 1971 (the last year these fees were increased), the amount collected for civil cases filed in superior courts would be \$11, and in both municipal and justice courts, the amount collected would be \$7.

Scope and Methodology

The purpose of this audit was to determine whether the counties are collecting and promptly remitting to the State the proper amount of filing fee revenue for the system. In addition, we reviewed the process courts use to grant or deny fee waiver applications and determined whether the courts were complying with laws and regulations when processing these applications.

To determine whether counties promptly remitted their monthly collections to the State, we reviewed monthly remittance advices that the auditor-controller's offices in four counties submitted to the State Treasurer's Office for fiscal year 1990-91. These four

counties are Los Angeles, Orange, Sacramento, and San Francisco. The filing fees these four counties collected for the Judges' Retirement Fund represent approximately 53 percent of the total amount of filing fees collected by all 58 counties for fiscal year 1990-91. If we determined that the counties had not promptly remitted the revenue to the State, we calculated the amount of interest earnings the State had lost. As part of this analysis, we allowed the counties 30 days to remit their monthly collections to the State, not beginning to calculate the interest earnings the State lost until 30 days after the end of the month of collection. For example, if the remittance was for July 1990, we calculated the amount of lost interest using the number of days from August 31, 1990, to the day the county submitted the remittance to the State.

To determine whether counties remitted the proper amount of revenue to the State, we visited one superior and one municipal court in each of three counties—Los Angeles, Orange, and San Francisco—and reviewed those courts' procedures for collecting filing fee revenue and reporting it to the county auditor-controllers. At each of these courts, we selected a sample of days from two months in fiscal year 1990-91 and determined the amount of revenue the courts collected for the system on those days. Next, we reviewed the courts' accounting records to determine if the revenue collected for those days was included in the total amount reported to the county auditor-controller's offices and was subsequently remitted to the State.

To determine whether the courts complied with laws and regulations to process fee waiver applications, we reviewed the procedures the courts established to process such applications. In addition, we selected a sample of 90 fee waiver applications, 15 at each of the six courts we visited, and determined whether the courts followed those procedures.

To develop the trend analyses shown in the introduction of the report, we reviewed the fund condition statement for the Judges' Retirement Fund shown in the Governor's Budget for the period fiscal year 1981-82 through fiscal year 1990-91. We also used this

information to develop a ten-year analysis that identifies the proportion of revenue in the Judges' Retirement Fund that each of the various funding sources represented each year, including the appropriation from the State's General Fund.

Finally, to determine what the filing fees collected for the fund would be if the fees had been adjusted in accordance with the rate of inflation, we reviewed the California Consumer Price Index prepared by the Department of Industrial Relations.

Chapter 1 Some Counties Are Not Promptly Remitting Filing Fees to the State

Chapter Summary

State laws require courts and counties to collect and remit to the State filing fees collected in superior, municipal, and justice courts on behalf of the Judges' Retirement System (system). During our review of the procedures used by six courts in three counties, we determined that the courts correctly reported the filing fee collections to the auditor-controller's offices in their respective counties. However, the auditor-controller's offices did not promptly remit the collections to the State. As a result, these funds were not immediately available to pay benefits to retirees of the system, and the State lost the opportunity to earn interest on these funds. Moreover, since the monthly remittance advices that counties submit to the State include collections for other state funds as well as for the Judges' Retirement Fund, the State lost interest earnings of nearly \$3.4 million on the collections reported by the four counties in our sample. For example, during fiscal year 1990-91, the State lost more than \$3 million in interest on funds Los Angeles County collected for various state programs because the county did not promptly remit these funds to the State.

Collection and Reporting Filing Fee Revenue

Sections 26822.3 and 72056.1 of the Government Code require counties to collect a \$3 fee for each civil case filed in superior court and a \$2 fee for each civil case filed in municipal and justice courts. The code sections also require counties to transmit these fees at the end of each month to the state controller for payment into the Judges' Retirement Fund. Furthermore, Section 5.31 of the *Manual of Accounting and Audit Guidelines for Municipal and Justice Courts* (manual), issued by the State Controller's Office,

requires county auditor-controllers to remit the State's share of fees, fines, forfeitures, and penalty assessments every month. This section of the manual lists the various funds for which collections should be reported each month, including the Judges' Retirement Fund; the State Penalty Assessment Fund, which supports the Victims of Crime Program; and the Fish and Game Preservation Fund. Finally, Section 8.10 of the manual states that courts must report their collections for a particular month to the county auditor-controller's office no later than the 15th of the following month.

To determine whether the courts correctly reported to their respective county auditor-controllers the fees they collected on behalf of the fund, we reviewed collection procedures at six courts in three counties—Los Angeles, Orange, and San Francisco. In addition, at each court, we selected a sample of days from each of two months in fiscal year 1990-91 and traced the daily collections to the monthly totals the courts reported to their respective county auditor-controller's offices. We found that all six courts correctly reported the fees each had collected on behalf of the Judges' Retirement Fund.

Although the courts correctly reported the filing fee revenue they had collected each month, the county auditor-controller's offices did not promptly remit these collections to the State. To determine how long the counties took to remit their collections to the State, we reviewed the monthly remittance advices that four counties submitted to the State during fiscal year 1990-91. Using these remittance advices, we determined the number of days after the end of the month that the counties took to submit the remittance to the State. As part of this analysis, we allowed the counties 30 days to remit their monthly collections to the State.

Each of the four counties we audited—Los Angeles, Orange, Sacramento, and San Francisco—did not promptly remit the revenue to the State as required by law and State Controller's Office guidelines. For example, Los Angeles County, which reports collections from all of its municipal courts and the superior court on one remittance advice, took more than 30 days to remit

these collections to the State for all 12 months of fiscal year 1990-91. The number of days that Los Angeles County took to remit funds to the State, after the end of the month for which the collections were made, ranged from 45 to 61 days, with an average of 57 days per month. Similarly, San Francisco County, which reports collections made by its superior and municipal courts on separate remittance advices, took more than 30 days to remit funds the superior court had collected for all 12 months of the fiscal year.

Because the counties are not promptly remitting their monthly collections to the State, those funds are not available to the various programs they are intended to support. As discussed in the introduction of this report, the system is a “pay as you go” system; therefore, the contributions made to the system are immediately used to pay benefits to current retirees. If the funds collected on behalf of the system are not promptly remitted to the State, these funds are not immediately available to pay benefits. In addition, when counties remit funds late, the State loses the opportunity to earn interest on the funds collected on behalf of the system. For example, the State lost approximately \$10,000 in interest that it could have earned on the collections that San Francisco County reported for the system.

Furthermore, because the monthly remittances the counties send to the State include collections for several state funds, including the Judges’ Retirement Fund, the amount of interest the State could have earned on these funds is substantial. Using the Pooled Money Investment Account’s monthly earnings rates for fiscal year 1990-91, we calculated the amount of interest the State could have earned on the collections reported by the four counties in our sample. As shown in the following table, the State lost the opportunity to earn more than \$123,000 in interest on the collections the four counties in our sample reported for the Judges’ Retirement Fund. Moreover, based upon total collections these counties reported for all the state funds, the State could have earned nearly \$3.4 million in interest.

**Interest the State Could Have Earned on
Collections Reported by Four Counties
for Fiscal Year 1990-91**

	Los Angeles	Orange	Sacramento	San Francisco	Total
Total Collections Reported	\$46,549,465	\$17,261,176	\$486,147	\$2,067,123	\$66,363,911
Interest for Judges' Retirement Collections					
Superior Court	48,796	0	1,961	9,968	60,725
Municipal and Justice Courts	60,335	915	1,430	118	62,798
Interest for All Other Collections	3,145,423	110,971	4,343	4,853	3,265,590
Total Interest	3,254,554	111,886	7,734	14,939	3,389,113

Los Angeles County did not promptly remit its collections to the State because some of the courts in the county did not report their collections promptly to the county auditor-controller's office, even though they reported them correctly. For example, we reviewed the monthly requisitions the courts in Los Angeles County submitted to the county auditor-controller and found that, for each month of fiscal year 1990-91, at least 3 of the 25 municipal and justice courts took 16 days or more to submit their requisitions. Furthermore, we noted that 7 courts took 16 days or more to report their collections six or more times during the year.

In some cases, courts took so long to report their collections that the county auditor-controller was unable to include these collections in the remittance that it sent to the State for the current month. As a result, fees collected by a court in one month would not reach the State until the following month or several months later. For example, four courts in Los Angeles County did not report to the county auditor-controller their collections for November 1990 until the end of December 1990. As a result, these collections were not included in the remittance the Los Angeles county auditor-controller sent to the State for November 1990.

Instead, they were included in the remittance submitted for the subsequent month, December 1990. Furthermore, because the county auditor-controller did not promptly remit the collections, the State did not receive the funds that the four courts collected during the month of November 1990 until the end of February 1991, when the State received the county's remittance for December 1990.

According to the principal accountant in the Los Angeles County auditor-controller's office, there is no written policy that sets a specific limit on the number of days the courts have to report their collections to the county auditor-controller's office. However, he also stated that the courts have been instructed to report the collections as soon as possible. Although Los Angeles County does not have a specific policy, as noted earlier, the *Manual of Accounting and Audit Guidelines for Municipal and Justice Courts* states that courts must report their collections to the county auditor-controller's office no later than the 15th of the following month.

San Francisco County did not promptly report its collections to the State because its auditor-controller's office did not have a process to track the preparation of the remittance advice and the corresponding warrant. As a result, the auditor-controller was not able to ensure that the documents were received by the State. For example, during our review of the remittances San Francisco County sent to the State for collections made by the superior court, we noted that the State did not deposit the collections for July 1990 into the state treasury until March 1991. Our review of the documents prepared for this remittance disclosed that, in September 1990, the county sent the warrant to the State without the corresponding remittance advice. As a result, the State did not know what the warrant was for and returned the warrant to the county. The county resubmitted the warrant and the remittance advice on March 22, 1991, and the funds were finally received by the State Treasurer's Office on March 27, 1991.

Corrective Action As a result of our review, San Francisco County has established procedures that provide a system to track the preparation of both the remittance advice and the warrant. This system will allow the auditor-controller to track each remittance to ensure that the State received the funds and deposited them into the state treasury.

Conclusion Courts correctly reported the funds they collected for the Judges' Retirement Fund during fiscal year 1990-91; however, the counties did not promptly remit these collections to the State. As a result, the funds were not available for the various programs for which they were collected. In addition, since the remittance advices include funds collected for other state programs, the State lost the opportunity to earn nearly \$3.4 million of interest on these funds.

Recommendations To ensure that funds the courts collect on behalf of various state programs are promptly remitted to the State, county auditor-controllers should take the following actions:

- Ensure that the courts promptly remit their monthly filing fee collections to the county auditor-controller's offices;
- Promptly remit these collections to the State in accordance with state law and the State Controller's Office accounting guidelines;
- Develop a written policy setting forth a specific limit on the number of days the courts have to report their collections to the county auditor-controller's offices; and
- Develop a system to track the preparation of the monthly remittances to ensure that they are submitted promptly and to ensure that they are received by the State.

Chapter 2 Courts Are Complying With Most Laws and Rules When Processing Applications for Fee Waivers

Chapter Summary

We reviewed the procedures six courts used to process applications requesting a waiver of court fees and costs and found that the courts complied with most of the laws and rules for granting or denying such applications. However, these courts did not have procedures to pursue recovery of fees for cases wherein a litigant who either was granted a fee waiver or was exempt from paying a fee to file a civil case received a monetary settlement. As a result, these courts may be losing the opportunity to collect filing fee revenues that support county and state programs.

Courts Comply With Most Laws When Granting or Denying Fee Waivers

Section 68511.3 of the Government Code requires the Judicial Council to develop and adopt forms and rules for courts to allow litigants to proceed with a case without paying the required court fees and costs. The code outlines the criteria courts must follow when granting or denying an application to have court fees and costs waived. When the litigant meets certain eligibility requirements, the law requires the court to grant the waiver; however, in some instances, the court has the discretion to determine whether or not to grant the litigant a waiver of all or part of the court fees and costs.

Courts are required by law to grant waivers for litigants who declare under penalty of perjury that they are receiving benefits pursuant to one of the following programs: Supplemental Security Income and State Supplemental Payments, Aid to Families With Dependent Children, Food Stamp, County Relief, General Relief, or General Assistance. In addition, courts must grant waivers to

litigants who declare that their monthly income is 125 percent or less of the current monthly poverty line established annually by the Secretary of Health and Human Services.

When the litigant does not meet any of the eligibility standards previously mentioned, the court has the discretion to grant the waiver if it determines that the litigant is unable to proceed without using money that is essential for the common necessities of life. In these instances, a judge reviews the financial information provided by the litigant and determines whether or not to grant the application.

Rule 985 of the California Rules of the Court states that the court may delegate to the clerk the authority to grant waivers to litigants who meet the standards of eligibility previously discussed. However, the rule also states that the court cannot delegate the authority to deny an application. All denials must be ordered by a judge. Furthermore, the rule states that, if an application is denied, an order explaining the reasons for the denial must be sent to the litigant or the litigant's attorney. The litigant has ten days after the denial order is served to pay the court fees and costs; otherwise, the case will be dropped.

To determine whether the courts processed applications requesting a waiver of court fees and costs in accordance with state laws and the rules of the court, we selected a sample of 90 applications, 15 in each of the six courts in our sample. We wanted to ensure that we reviewed applications filed by litigants who met the standard eligibility requirements as well as applications filed by those who did not, so we selected a judgemental sample from the population of applications filed during fiscal year 1990-91.

Litigants who declared under penalty of perjury that they met one of the eligibility requirements filed 68 of the 90 applications. As required by law, the courts granted each of these applications. The remaining 22 applications were filed by litigants who stated that they could not pay the court fees without using money that was essential for the common necessities of life. As required by law, each of these applications was reviewed by a judge; 14 of the 22 applications were approved, and the remaining 8 were denied.

The courts properly notified the litigants in 7 of the 8 applications that were denied. In the remaining case, we could not locate the order denying the application. However, we noted that the litigant paid the filing fees; therefore, we concluded that the court did notify the litigant that his application was denied. Of the 8 litigants whose applications were denied, 6 paid the filing fees, and the remaining 2 did not.

Majority of Waivers Automatically Granted as Required by Law

Most of the courts in our sample did not maintain statistics on the number of fee waivers they processed; however, for those that did maintain statistics, the majority of the applications for waivers of court fees and costs were granted. In addition, court administrators in each of the courts we audited stated that between 80 and 95 percent of the litigants who submit an application requesting a waiver of the court fees and costs meet one of the standards of eligibility; therefore, as required by law, these litigants are automatically granted a fee waiver. For example, Department 8 in the Los Angeles Superior Court, which handles family law cases, provided statistics for calendar year 1991 showing that the court received an average of 600 fee waivers per month and approved 594 (98.9 percent). Similarly, the Los Angeles Municipal Court reported that, during the first 11 months of calendar year 1991, it received an average of 889 waivers per month and approved 881 (99 percent) of them.

Courts Are Not Pursuing Recovery of Fees and Costs

Section 68511.3 of the Government Code states that, when the litigant whose fees have been waived is entitled to recover those fees and costs from another party, the court may assess the amount of the waived fees and costs against the other party and order the party to pay the sum to the county. In addition, this code section allows the court, at any time within three years after the court grants the waiver, to order the litigant to pay the court any waived fees and costs if it finds that the litigant's financial condition has changed and that the litigant is now able to pay the waived fees and costs.

Section 6103 of the Government Code states that public agencies are not required to pay any fees to file papers in any court. However, Section 6103.5 of the code states that, whenever a judgement is recovered by a public agency, the clerk of the court shall include as part of the judgement the amount of the filing fee that would have been paid. Furthermore, Section 6103.5 of the code states that, when an amount equal to the filing fee is collected by the public agency, it is due and payable to the court. Finally, the section states that the fiscal officer of the public agency must remit amounts due to the court at least four times during the year.

Court administrators stated that, although state law requires public agencies to pay to the court an amount equal to the filing fees when they recover a judgement, the courts do not have procedures to ensure that public agencies comply with this requirement. In addition, administrators in five of the six courts stated that the courts do not have procedures to ensure that they recover waived fees and costs when a litigant has been granted a fee waiver and is later entitled to recover those fees from another party. The supervising court clerk for the Orange County Superior Court stated that the court does have a set of procedures for taking action against litigants when the court determines that there is a likelihood of recovering fees. In these cases, the court sends a letter to inform the litigants of their obligation to pay the fees.

The court administrators stated that the courts do not have procedures to ensure recovery of filing fees for several reasons. First, some of the administrators stated that most cases do not result in a monetary settlement, and it is not cost-effective for the courts to pursue recovery for a small number of cases. Second, the administrators stated that, in many cases, the litigant who was granted the fee waiver is the defendant; therefore, even if the litigant prevails, there would be no settlement from which to recover the fees. In our sample of 90 applications, we noted that 62 of the litigants who filed the applications were defendants in the case.

Finally, some of the administrators stated that they do not have tracking systems that would allow them to identify those cases in which a settlement had been awarded, and it would not be cost-effective to establish such a system. For example, the Family Law

Division in the Los Angeles County Superior Court reviewed a sample of 48 fee waiver applications filed during calendar year 1988 to determine the feasibility of recovering court fees and costs. Of the 48 applications, the division determined that recovery of fees was possible in only 8 of the cases. By extrapolating this to the number of cases filed for July 1991, the division estimated that it could recover approximately \$15,900 per month, or \$191,000 per year. As part of this analysis, the assistant division chief of the Family Law Division recommended the formation of a fee waiver unit that would be responsible for following up on cases when a fee waiver was granted. However, the director of Central Civil Court Services for the Los Angeles County Superior Court stated that implementing a system to attempt recovery of filing fees would not be cost-effective because such a system would require data processing capabilities beyond those of the current system. Therefore, the fee waiver unit was not established.

Although court administrators believe that developing and implementing a process to recover filing fees would not be cost-effective, most of the courts have not conducted studies to determine what the cost would be. Moreover, if such a study proved that the process would be cost-effective, the courts may be losing the opportunity to recover revenue that supports state programs such as the Judges' Retirement System and county programs.

**Corrective
Action**

The chief of the Civil Division in the Los Angeles Municipal Court stated that the court is currently in the process of developing a program to recover fees from public agencies that are exempt from paying the filing fees. Specifically, she stated that the court has identified a list of cases and is in the process of sending out demand letters to each of the various agencies involved in these cases.

Conclusion

Courts are complying with most laws and rules when processing applications for fee waivers. During our review of the procedures the six courts in our sample used to process fee waiver applications, we found that the courts complied with laws and rules when

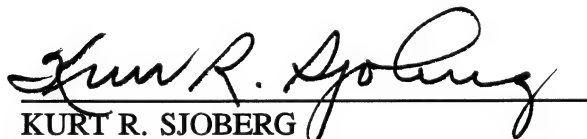
granting or denying the applications. However, the courts did not have procedures to pursue recovery of fees when the litigant who either was granted a waiver or was exempt from paying the fees received a monetary settlement. Court administrators stated that the courts did not pursue recovery in these cases because most cases do not result in such settlements, and it would not be cost-effective for the courts to pursue recovery in these cases. As a result, these courts may be losing the opportunity to collect filing fee revenues that support county and state programs.

Recommendation

To determine whether it would be cost-effective to pursue recovery of fees when the litigant who is granted a fee waiver or is exempt from paying the fees subsequently receives a settlement, the courts should review a sample of fee waiver applications and conduct a feasibility study similar to the study conducted by the Los Angeles Superior Court.

We conducted this review under the authority vested in the auditor general by Section 10500 et seq. of the California Government Code and according to generally accepted governmental auditing standards. We limited our review to those areas specified in the audit scope section of this report.

Respectfully submitted,


KURT R. SJOBERG
Auditor General (acting)

Date: August 31, 1992

Staff: Robert Christophel, Audit Manager
Elaine M. Howle
Colin Miller
Paul A. Navarro



**COUNTY OF LOS ANGELES / AUDITOR-CONTROLLER
ACCOUNTING DIVISION**

500 WEST TEMPLE STREET, ROOM 603, LOS ANGELES, CALIFORNIA 90012-2762
PHONE: (213) 974-8321 FAX: (213) 626-5427

DANIEL O. IKEMOTO
AUDITOR-CONTROLLER

PATRICK T. McMAHON, CHIEF
ACCOUNTING DIVISION

August 26, 1992

Mr. Kurt R. Sjoberg, Auditor General (Acting)
Office of the Auditor General
660 J Street, Suite 300
Sacramento, California 95814

Dear Mr. Sjoberg:

Attached are our comments to the draft copy of your report entitled "Some Counties Are Not Properly Remitting to the State Fees Collected for the Judges' Retirement System." Our comments address the recommendations indicated on pages 20 & 21 of your report.

Additionally, we would like to review how the figure was computed for the interest the State could have earned on collections reported by Los Angeles County for fiscal year 1990-91 that is indicated on the table following page 17 of your report.

Please call me at (213) 974-8321 or David Yamashita of my staff at (213) 974-8325 with any questions you may have.

Very truly yours,

DANIEL O. IKEMOTO
AUDITOR-CONTROLLER

By 
Patrick T. McMahon, Chief
Accounting Division

PTM:DY-sh
21:STATEFEE:1

Attachment

Attachment

**TITLE: "SOME COUNTIES ARE NOT PROMPTLY REMITTING TO THE STATE FEES
COLLECTED FOR THE JUDGES' RETIREMENT SYSTEM"**

Page 20.

RECOMMENDATIONS

To ensure that funds the courts collect on behalf of various state programs are promptly remitted to the State, county auditor-controllers should take the following actions:

- Ensure that the courts promptly remit their monthly filing fee collections to the county auditor-controller's offices;

COMMENTS:

The Auditor-Controller's Office cannot enforce the courts to promptly remit their monthly filing fee collections to the Auditor-Controller. We believe the recommendation should indicate that the courts must ensure that their monthly collections be promptly submitted to the Auditor-Controller's Office.

Page 21.

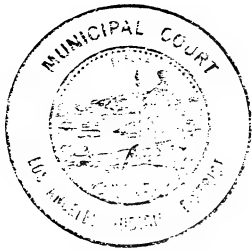
- Develop written policy setting forth a specific limit on the number of days the courts have to report their collections to the county auditor-controller's offices; and

COMMENTS:

The Auditor-Controller's Office does not believe that a written policy is necessary because the Manual of Accounting and Audit Guidelines for Municipal and Justice Courts already sets forth this specific policy.

The Auditor-Controller's Office can remind the various courts in Los Angeles County of this requirement contained in the above mentioned manual.

21:STATEFEE:1-2



Los Angeles Municipal Court

Los Angeles Judicial District
OFFICE OF THE COURT ADMINISTRATOR

Edward M. Kritzman
Court Administrator/Clerk
Frederick K. Ohlrich
Assistant Court Administrator

August 27, 1992

Kurt R. Sjoberg
Acting Auditor General
Office of the Auditor General
660 J Street, Suite 300
Sacramento, CA 95814

Dear Mr. Sjoberg:

Thank you for the opportunity to respond to your draft audit report. We have reviewed the draft copy of the report entitled "Some Counties Are Not Promptly Remitting to the State Fees Collected for the Judges' Retirement System".

On February 25, 1992, your staff, led by Elaine Howle, discussed their findings with my Accounting Division Chief, Cary Tanamachi. Ms. Howle indicated at that time Los Angeles Municipal Court was properly collecting and distributing revenue to the Judges' Retirement Fund. The only issue mentioned by Ms. Howle was that our Court was taking an average of 23-24 days to report collections to the County Auditor-Controller.

Due to the magnitude and complexity required by the State to distribute revenue to so many funds, this 15 day time frame is extremely difficult to meet. Attached is a sample of one of our monthly distribution reports which is sent to the Auditor-Controller. After reviewing this report you will have a sense of how much effort is required by a court to distribute monthly revenues.*

Regardless of the immense size of our organization and the requirements imposed by recent years' legislation changes in revenue distribution, I assure you that we will continue to make every effort to adhere to the guideline specified in Section 8.10 of the Manual of Accounting and Audit Guidelines for Municipal and Justice Courts requiring the reporting of collections to the Auditor-Controller no later than the 15th of the following month.

*The monthly distribution report sent by the Los Angeles Municipal Court is available for review in the Office of the Auditor General.

Our review of your report indicates that there is only one recommendation below which address the courts:

Recommendation

To determine whether it would be cost-effective to pursue recovery of fees when the litigant who was granted a fee waiver or was exempt from paying the fees subsequently received a settlement, the courts should review a sample of fee waiver applications and conduct a feasibility study similar to the study conducted by the Los Angeles Superior Court.

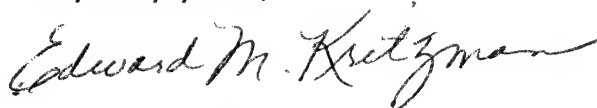
Response

The Los Angeles Municipal Court agrees with the recommendation and has already started sending demand letters to governmental agencies filing per 6103.5 GC. An evaluation will be done on this project's cost effectiveness. If effective and successful, a program will be developed to automatically generate demand letters to governmental agencies on recovery of court fees.

On fee waivers, the Court will be conducting a feasibility study similar to Superior Court to determine whether it would be cost effective to pursue recovery of fees from the litigant.

If you have any questions or comments regarding our responses, please feel free to contact Cary Tanamachi, Chief of the Accounting & Audit Services Division, at (213) 974-6001.

Very truly yours,



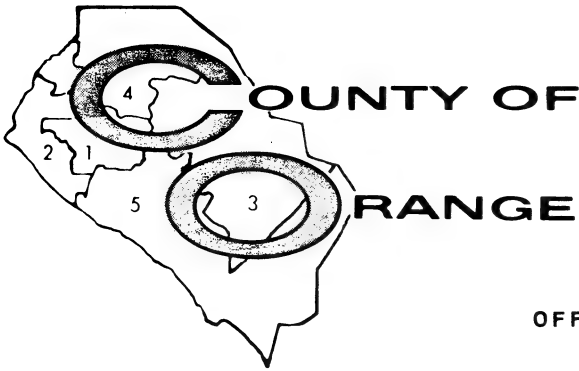
Edward M. Kritzman
Court Administrator

/dsh

Attachments

cc: Jural Garrett, Deputy Court Administrator
Los Angeles Municipal Court

Cary Tanamachi, Chief
Accounting & Audit Services Division



STEVEN E. LEWIS
AUDITOR-CONTROLLER

FINANCE BUILDING
630 NORTH BROADWAY
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SANTA ANA, CA. 92702-0567

TELEPHONE: 834-2450
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OFFICE OF AUDITOR-CONTROLLER

August 24, 1992

State of California
Office of the Auditor General
660 J Street, Suite 300
Sacramento, CA 95814

Attention: Mary P. Noble, Deputy Auditor General

Subject: Report P-141: Some Counties Are Not Promptly Remitting
to the State Fees Collected for the Judges' Retirement
System

In response to the subject report, we have no specific comments since no specific findings were mentioned in the report concerning Orange County.

We do find that the implication in the report that the county auditor-controllers are not promptly remitting court collections to the State is inaccurate when applied to Orange County. This office normally mails a check to the State within three days of receipt of each request from the courts. The only delay in our office is the necessity of pulling the State's checks to match them with the required State Controller remittance advice forms so the two can be mailed together.

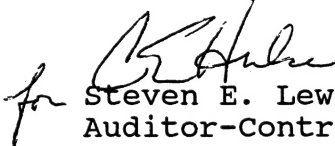
We believe our office and the Superior and Municipal Courts in Orange County are remitting collections to the State as quickly as possible given budgetary and staff constraints, and given the enormous complexity of the court fees and fines allocation process. As you know, the numerous legislative changes to the State Trial Court Funding program, and many other new and revised court fines and fees, enacted over the past three years, have made it very difficult for the courts to keep up with the constantly changing fees, fines, surcharges, and assessments schedules.

Because of these changes, Orange County has been required to continually update manual and computer systems, and to develop and implement very expensive new computer cashiering and allocation systems in the courts. Some of the delays in remitting court collections to the State are attributable to these constant systems changes and new systems implementations. Again, continual

Mary P. Noble
August 24, 1992
Page 2

changes to the court fees and fines by the Legislature have made these systems changes necessary.

This response relates to this department's limited involvement in the court fees and fines remittance process. The individual courts included in the audit should be contacted for their responses to your report.


for Steven E. Lewis
Auditor-Controller

JMM:jr

cc: Alan Slater, Executive Director, Orange County Superior Court
Robert B. Kuhel, Executive Officer, Central Municipal Court
James R. Peterson, Executive Officer, Harbor Municipal Court
William J. Brennan, Executive Officer, North Municipal Court
Margaret A. Hamlin, Executive Officer, South Municipal Court
Richard W. Biggins, Executive Officer, West Municipal Court
Gary L. Granville, County Clerk
Ernie Schneider, County Administrative Officer

AGAudit/JMM

The Municipal Court

ROBERT B. KUHEL
COURT EXECUTIVE OFFICER

OF THE CENTRAL ORANGE COUNTY JUDICIAL DISTRICT
700 CIVIC CENTER DRIVE WEST, SANTA ANA, CALIFORNIA 92701-4080
TELEPHONE 714/834-3575

MAILING ADDRESS:
P.O. BOX 1130
SANTA ANA, CA 92702-1138

August 24, 1992

Mr. Kurt R. Sjoberg
Auditor General (Acting)
State of California
Office of the Auditor General
660 J Street, Suite 300
Sacramento, CA 95814

Dear Mr. Sjoberg:

Subject: Fees Collected for the Judges Retirement System

Chapter 1 - Remitting Filing Fees to the State Promptly

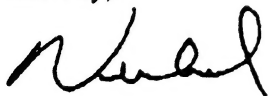
Central Orange County Municipal Court remits all funds collected for the Judges Retirement System regularly each month. The Auditor-Controller submits each court's warrant a few days after receiving the State Remittance forms from the courts.

Chapter 2 - Applications for Fee Waivers

This court does not have a procedure to recover filing fees when the fees have been waived because it would not be cost-effective to establish a manual system. The Civil Division will be automated in the future and tracking of cases granted fee waivers could be included. As stated in the report, most of the fee waivers are granted to the defendants where there was not a monetary award.

Section 6103 of the Government Code states that public agencies are not required to pay the filing fees, but the fees shall be included as part of the judgment amount. A procedure will be developed to closely follow these awards and the recovery of fees, when the Civil Division is automated. To manually track these cases, over many years, is not cost-effective at this time.

Sincerely,



Robert B. Kuhel
Court Executive Officer

C: Steven E. Lewis, Auditor-Controller

Superior Court of California
San Francisco

EXECUTIVE OFFICER/CLERK OF THE COURT
CITY HALL ROOM 313
(415) 554-4110

August 24, 1992

Mr. Kurt R. Sjoberg
Auditor General
State Office of the Auditor General
660 J Street, Suite 300
Sacramento, CA 95814

Dear Mr. Sjoberg,

I have reviewed your report concerning the remittance of fees collected for the Judges' Retirement System. I understand that the Assistant Controller of San Francisco, Mr. John Madden, has responded to your comments concerning the timeliness of the remittance of these fees.

The San Francisco Superior Court does not support the recommendation that the Court study the cost effectiveness of attempting to collect fees from successful litigants for whom the fees were originally waived. Our analysis indicates that the amount of funding that is not deposited into the Judges' Retirement System each year due to fee waivers granted in San Francisco is approximately \$3,400. There therefore seems to be little benefit from attempting to collect funds from that portion of litigants that is successful. I also understand that the study in Los Angeles resulted in the Los Angeles Superior Court resolving not to attempt collections in these cases.

Please do not hesitate to contact me with any questions that you may have.

Sincerely,

Michael K. Tamony

Michael K. Tamony
Executive Officer

cc: Kate Harrison

**cc: Members of the Legislature
Office of the Governor
Office of the Lieutenant Governor
State Controller
Legislative Analyst
Assembly Office of Research
Senate Office of Research
Assembly Majority/Minority Consultants
Senate Majority/Minority Consultants
Capitol Press Corps**